IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DANIEL B. GRAVES, Plaintiff, v. DEUTSCHE BANK SECURITIES, INC., Defendant.	**CIVIL ACTION NO.** **1:07-cv-05471-BSJ-KNF** **(Electronically Filed)**

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION TO DISQUALIFY THE LAW FIRMS OF SIDLEY AUSTIN LLP AND SEYFARTH SHAW LLP FROM REPRESENTING, AS TO THIS MATTER, WITNESSES HEREIN WHO ARE FORMER EMPLOYEES OF DEFENDANT

Plaintiff has filed this Motion because defendant's law firm's solicitation of free counsel to nonparty witnesses is ethically improper. *Rivera v. Lutheran Medical Center*, 866 N.Y.S.2d 520 (Sup. Ct. Kings County 2008), *aff'd*, 73 A.D.3d 891 (2nd Dep't 2010). Defendant's law firm cannot escape the ethical bar by arranging for its client to accomplish the same thing indirectly.

The substitution of the firm of Seyfarth Shaw LLP for Sidley Austin LLP is no more than window dressing. No former employee is paying Seyfarth Shaw for its services, and it is reasonable to assume that defendant is paying for these services. The firm of Seyfarth Shaw is as closely aligned with the interests of defendant as the firm of Sidley Austin LLP, as its own admission of a joint-representation agreement shows, and the production of the documents it has withheld will show whether the ethical requirements for third-party payors of legal services have been observed.

The production of these documents would also show whether the former employees were informed of, and consented to, a joint representation agreement. Under New York law, their informed consent is necessary to the validity of such an agreement. *Excelsior 57th Corp. v. Lerner*, 553 N.Y.S.2d 763 (1st Dept.1990).

The fact that no former employee has been asked to consent to Seyfarth Shaw's simultaneous representation of other former witnesses, another ethical requirement, is an indication that its asserted representation of witnesses who are former employees is not the normal attorney-client relationship, but is a mere cover for its looking out for the interests of defendant.

There are in fact no interests a nonparty former employee has in common with defendant, but the improper solicitation of representation creates a false sense of affinity with defendant on the part of witnesses that can taint their testimony.

Plaintiff's Motion should be granted.

Respectfully submitted,

Richard T. Seymour (RS-8094)
rick@rickseymourlaw.net
Law Office of Richard T. Seymour, P.L.L.C.
1150 Connecticut Avenue N.W., Suite 900
Washington, D.C. 20036-4129
(202) 862-4320 – Telephone
(202) 549-1454 – Cell
(800) 805-1065 – Telecopier

Steven A. Berger (SB-2038)
sberger@bergerwebb.com
Jonathan Rogin (JR-9800)
jrogin@bergerwebb.com
Berger & Webb, LLP
1633 Broadway, 46th Floor
New York, N.Y. 10019
(212) 319-1900 – Telephone
(212) 319-2017 and -2018 – Telecopiers

By: ___/s/ Richard T. Seymour______
Richard T. Seymour (RS 8094)
Attorneys for Plaintiff

Dated: January 27, 2011

Certificate of Service

I certify that I have, this 27th day of January, 2011, caused a true and correct copy of Plaintiff's Memorandum of Law in support in support of his Notice of Motion and Consented Motion to Disqualify the Law Firms Of Sidley Austin LLP And Seyfarth Shaw LLP From Representing, as to This Matter, Witnesses Herein Who Are Former Employees of Defendant, on:

(a) Counsel for defendant who have informed counsel for plaintiffs that they purport to represent, as to this matter, the former employees Jeffrey Amling and James DeNaut, by electronic service through the Court's ECF system, addressed to defendant as follows:

Cliff Fonstein, Esq.
Joanne Seltzer, Esq.
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019

and

(b) Counsel from Seyfarth Shaw LLP who have informed counsel for plaintiffs that they purport to represent, as to this matter, the former employees Blair Faulstich, Elizabeth Chang, Christopher Johnson, and Susan Hoffman, witnesses herein who were noticed for deposition, by e-mail addressed to them as follows:

Jeremi L. Chylinski, Esq.
Seyfarth Shaw LLP
620 Eighth Avenue
New York, NY 10018-1405
jchylinski@seyfarth.com

David M. Burns, Esq.
Seyfarth Shaw LLP
975 F Street, N.W.
Washington, D.C. 20004
dburns@seyfarth.com

Barry J. Miller, Esq.
Seyfarth Shaw LLP
World Trade Center East
Two Seaport Lane
Suite 300
Boston, MA 02210-2028
bmiller@seyfarth.com

/s/ Richard T. Seymour________

Richard T. Seymour (RS-8094)
rick@rickseymourlaw.net
Law Office of Richard T. Seymour, P.L.L.C.
1150 Connecticut Avenue N.W., Suite 900
Washington, D.C. 20036-4129
(202) 862-4320 – Telephone
(202) 549-1454 – Cell
(800) 805-1065 – Telecopier